

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: June 18, 2002

To: The Commission
(Meeting of June 27, 2002)

From: Bill Julian
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 117 (Migden)** – Community aggregation

As Amended June 5, 2002

Recommendation: Oppose unless amended.

Summary: This bill partially reinstates direct access in California. It authorizes end-use customers to aggregate their electric loads and purchase energy from an electric service provider either through private aggregators as individual users, or through community choice aggregators as members of a local community. Specifically, this bill:

1. Defines private aggregator and requires a customer to “opt in” pursuant to a written declaration to be served through the efforts of a private aggregator. (Sec. 2., PU Code sections 331(g) and 366(b) as proposed to be amended).
2. Defines "community choice aggregation" as aggregation by a public agency that observes certain procedures for adoption of an “implementation plan” and includes all customers within the community to be aggregated who do not “opt out.” (Sec. 2, PU Code sections 331(b) and 366(d) as proposed to be amended).
3. Provides for registration with the PUC as an “electric service provider” (ESP) for community choice aggregators. (Sec. 4., PU Code section 394 as proposed to be amended).
4. Defines default service as service by the existing electric corporation. (Sec. 2, PU Code section 366(a)(4) as proposed to be amended).

5. Prohibits aggregation of electric load if that load is served by a local publicly owned electric utility. (Sec. 2, PU Code section 366(d)(1) as proposed to be amended).
6. Establishes as a condition precedent to implementation of community choice aggregation a determination by the PUC whether “exit fees” are to be paid and the appropriate amount of the exit fee. (Sec. 2, PU Code section 366(d)(8) and 366(e) as proposed to be amended). (See below for considerations in establishing exit fees.)
7. Requires all customers to be notified of their right to opt-out of the community choice aggregation program. (Sec. 2, PU Code section 366(d)(2), (11) and (13)(A)(i) as proposed to be amended).
8. Requires a community choice aggregator establishing load aggregation to develop an implementation plan detailing the process and consequences of aggregation, to be filed with the PUC. (Sec. 2, PU Code section 366(d)(3), (4) and (7) as proposed to be amended).
9. Requires community choice load aggregation to provide for universal access, reliability, and equitable treatment of all classes of customers, and to meet applicable statutory or Commission requirements concerning aggregated service. (Sec. 2, PU Code section 366(d)(4) as proposed to be amended).
10. Directs electrical corporations to cooperate with cities and counties as they contemplate community choice aggregation programs, providing appropriate billing, load data and related information and to provide metering, billing, collection, and customer service to retail customers that participate in community choice aggregation programs including identifying the community choice aggregator in the utility bill as providing the energy component of the bill. (Sec. 2, PU Code section 366(d)(9) as proposed to be amended).
11. Permits ratepayers to opt-out of community aggregation to default electric service within 60 days of the date of enrollment, without charge and that any Commission-approved re-entry fees to be imposed after the 180-day opt-out period are to reflect the cost of re-entry. (Sec. 2, PU Code section 366(d)(11) as proposed to be amended).
12. Directs the Commission to assure that any registered ESP can pay re-entry fees, through a bond or other financial requirement. (Sec. 5, PU Code section 394.25(e) as proposed to be amended).
13. Permits electrical corporations to recover from ratepayers all reasonable costs of implementing this bill, except that transaction-based costs of notices, billing, metering or other services provided by an aggregator are to be recovered from the aggregator or its customers on terms, and at rates to be approved by CPUC. (Sec. 2, PU Code section 366(d)(17) as proposed to be amended).

14. Requires an end-use customer that purchases power from a community choice aggregator to pay the Department of Water Resources (DWR) any difference between DWR's procurement costs and the rates collected by DWR from the customer during the term of service, as well as DWR's net unavoidable cost of future power procurement that is attributable to the customer; requires DWR to provide an estimate of the above amounts to the customer and to the Legislature within 30 days of the request. (Sec. 2, PU Code section 366(e) as proposed to be amended).
15. Directs the Commission to provide community choice aggregators with a share of energy efficiency funds proportional to public goods charge funds paid by the members of the community choice aggregation. (Section 3, adding PU Code section 381.1.)

Analysis: This bill reinstates direct access, in two forms – through aggregation by “private aggregators” and through aggregation by public agencies, called community choice aggregators.

1. **Governor’s veto of prior legislation**

An earlier version of the community choice aggregation features of the bill, ABX2 9 was vetoed by the Governor. The Governor’s veto message cited two concerns, neither of which are fully addressed by the bill: (1) “[R]apid growth in direct access necessitates more concise cost containment provisions for the remaining IOU customers than those contained in this bill, and those provisions should apply to all direct access contracts.” (emphasis added); (2) “[The] bill does not clearly authorize fees to cover costs that may result when direct access customers return to service with an IOU, which would create new and unanticipated procurement obligations for the IOU.”

The Governor’s final admonition was, “Any efforts to allow direct access must be equitable to all stakeholders.” The bill develops exit and re-entry fee provisions and various process protections for community choice aggregations. It does not apply any of those measures to “private” aggregations, thus contravening the Governor’s Veto Message. The bill should be amended to eliminate the private aggregator provisions.

2. **Exit and re-entry fees**

AB 117 addresses exit and re-entry fees as applicable only to community choice aggregations. To the extent that the bill, concomitant with PUC proceedings, would potentially establish multiple regimes for exit and re-entry fees for different types of direct access customers (departing load), it is problematic when viewed through the lens of the Governor’s Veto Message.

- a. **Exit Fees:** Establishment of a community choice aggregation is preceded by decision of the Commission on whether to access an “exit fee” in accordance with directives in the bill as to what costs should be recovered in the exit fee. The purpose of the exit fee is to “...recover any reasonably unavoidable past or future power procurement costs incurred by the electrical corporation for bundled service customers or by the Department of Water Resources...and to prevent cost shifting

to remaining customers....” (Section 366(e), page 11 lines 13-23 of the bill). The exit fees “at a minimum” are to be equal to charges that would be imposed to recover costs for the DWR bonds (Section 366 (e)(1), page 11, lines 24-33 of the bill). Any such amounts are the property of DWR.

In addition the Commission is authorized to impose “other exit fees” which may include other aspects of “reasonably unavoidable past or future power procurement costs,” which shall be the property of the utilities or DWR as determined by the Commission (Section 366(e)(2), page 11, lines 34-37 of the bill). The Commission is directed to revise the exit fees “as necessary to reflect changes due to a determination of actual cost” (Section 366(e)(4), page 12, lines 6-14).

The exit fee provisions in the bill do not apply to private aggregations. If private aggregation remains in the bill, *the bill should be amended to make these provisions applicable to private aggregations as well as community choice aggregations.*

The Commission has pending before it a proceeding to establish a cost recovery surcharge (CRS) applicable to customers with direct access relationships established prior to December 20, 2001 (Old DA). The bill does not by its terms apply to Old DA and the broad policy principles for establishing “exit fees” for community choice aggregations do not appear to drive any particular outcome for the Old DA proceeding.

- b. Re-entry fees: The bill anticipates that the Commission will develop re-entry fees for community choice aggregation customers who return to default service either voluntarily (as an exercise of opt-out rights, Section 366(d)(11), page 8, lines 30-35 of the bill) or involuntarily (through action by the community choice aggregator (Section 394.25(e), page 17, lines 4-14 of the bill). In line with the Governor’s Veto Message, re-entry fees should be applicable to all customers returning to utility service from direct access, whether they be returning from Old DA, from community choice aggregation or from private aggregation if it remains in the bill. *The bill should be amended to provide a consistent non-discriminatory and inclusive approach to re-entry fee applicable to all direct access customers.*

Pursuant to the bill, the re-entry fee of a direct access customer who is returned to default service involuntarily is the responsibility the ESP, not the customer (Section 394.25(e), page 17, lines 4-9). To enforce that obligation, the Commission is directed to require a bond as a condition of registration of the ESP. However, under existing law, certain direct access providers (ESPs) are not required to register with the Commission pursuant to Section 394 – those who serve customers who are not residential or small commercial customers (PU Code 394(a)). The failure of existing law and the proposal in the bill to require registration of these ESPs and to provide financial guarantees of the ability to

cover re-entry fees for involuntarily returned direct access customers appears to run contrary to the Governor's suggestion in the veto message of equitable treatment of all customers. The bill should be amended to provide for registration of all ESPs.

3. Community choice aggregation process

AB 117 contains an explicit procedure for the creation of a community choice aggregation (Section 366(d), page 5, lines 16-page 10, line 20 of the bill). The steps are as follows:

- a. Implementation Plan: Development of an implementation plan by the community choice aggregator and adoption at "a duly noticed public hearing," followed by filing with the PUC (Section 366(d)(3)).

A city, county or city and county must adopt the implementation plan by ordinance (Section 366(d)(10), page 7, lines 38-40 of the bill).

- b. PUC Plan Certification: Within 90 days after filing, the Commission "shall certify that it has received the implementation plan" and "provide the community choice aggregator with its findings on whether or not an exit fee must be paid" (Section 366(d)(7), page 7, lines 3-11 of the bill). Imposition of exit fees appears to be a condition precedent to "approval" of an implementation plan (Section 366(e), page 11, lines 13-23 of the bill).

The Commission is directed to "designate the earliest position effective date for implementation...taking into consideration the impact on the annual procurement plan of the electrical corporation." (Section 366(d)(8), page 7, lines 12-20 of the bill.)

- c. Consumer Notices: Thirty days prior to the effective date and continuing 90 days after the effective date, the community choice aggregator is to provide notice to customer of their automatic enrollment (Section 366(d)(13), page 9, lines 4-36 of the bill). Customers have 60 days to opt-out "without penalty," after which an opt-out would be accompanied by a re-entry fee (Section 366(d)(11), page 8, lines 8-36).
- d. Utility Obligations: Within ten days after implementation plan filing, the Commission provides notice to the serving utility (Section 366(d)(6), page 6, lines 39-page 7, line 2 of the bill). Utilities must "cooperate fully" with community choice aggregators, including providing information, continuing delivery services and billing services on terms established by the Commission (Section 366(d)(9), page 7, lines 21-37 of the bill).

The bill anticipates that community choice aggregators may “...group retail electricity customers to solicit bids and contract for electric power and energy services....and enter into agreements [with third parties] for services” (Section 366(d)(1), page5, lines 23-27 of the bill). The serving utility must “transfer all applicable accounts to the new supplier” within 30 days after “...the community choice aggregator’s contract is signed....” (Section 366(d)(15)&(16), page 10, lines 1-10 of the bill).

- e. Registration as an ESP: Community choice aggregators are to register with the Commission as an ESP (Section 366(d)(14), page 9, lines 37-40 and Section 394(a), page 13, lines 13&14 of the bill). The purpose of registration is to “insure compliance with basic consumer protection rules and other procedural manners” (Section 366(3)(14), page 9, lines 38 &39 of the bill).

Comment: The model for customer service envisioned by AB 117 is a 4-party arrangement among a community aggregator, a utility, a third party service provider and an end-use customer. It is not clear how the relationship between the end-use customer and the other three participants will fit within the Commission’s current Rule 22, which covers the establishment of direct access relationships under AB 1890. If AB 117 is enacted, the PUC will have to revise Rule 22.

AB 117 does not require a community aggregator to perform any due diligence with regard to the third party providers, or to provide customers with any information through which they could perform due diligence. Of particular concern would be financial and operational ability to provide contracted-for services, and assurances of reliability. Since community aggregation will apply to all customers residing within the jurisdiction, including both the sophisticated and the unsophisticated, the public agency undertaking community aggregation responsibilities should undertake an independent evaluation of the capabilities of any third-party contractor on behalf of the community, as a condition of certification of a plan by the PUC. *The bill should be amended to provide such a requirement.*

Any third party providing energy services to community aggregation customers would be registered as an ESP pursuant to Section 394, as would the public agency that has taken on community aggregator responsibilities. PUC registration procedures and requirements are not in their current form a substitute for due diligence. *The bill should be amended to provide for ESP registration procedures that include greater financial and operations disclosures, from which consumers could perform their own due diligence.*

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Date: June 20, 2002

BJ:mpg
Attachment

BILL LANGUAGE:

BILL NUMBER: AB 117 AMENDED
BILL TEXT

AMENDED IN SENATE JUNE 19, 2002
AMENDED IN SENATE JUNE 5, 2002
AMENDED IN ASSEMBLY JANUARY 9, 2002

INTRODUCED BY Assembly Member Migden

JANUARY 22, 2001

An act to amend Sections 331 , 366, 394, and 394.25 of, and to add Section 381.1 to, the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 117, as amended, Migden. Electrical restructuring: aggregation.

(1) Existing law, relating to transactions between electricity suppliers and end-use customers, authorizes various entities to aggregate electrical loads, and defines an "aggregator" as one of those entities that provides power supply services, including combining the loads of multiple end-use customers and facilitating the sale and purchase of electrical energy, transmission, and other services on behalf of the end-use customers.

This bill would, instead, authorize customers to aggregate their ~~electric~~ *electrical* loads as individual consumers with private aggregators, as defined, or as members of their local community with community choice aggregators, as defined. The bill would authorize a community choice aggregator to aggregate the electrical load of interested electricity consumers within its boundaries. The bill would require a community choice aggregator to file an implementation plan with the Public Utilities Commission *in order for the commission to determine whether a cost recovery mechanism shall be imposed on the community choice aggregator* ~~and would prohibit the commission from approving any plan for community choice aggregation subsequent to September 20, 2001, unless, as a condition of approval, exit fees are imposed on customers electing to participate in the community choice aggregation~~

~~plan in an amount sufficient to recover any reasonably unavoidable past or future power procurement costs incurred by the electrical corporation for bundled service customers or by the Department of Water Resources and to prevent cost shifting to remaining customers served by the electrical corporation or the Department of Water Resources~~. *The bill would require a retail end-use customer electing to purchase power from a community choice aggregator to pay specified amounts for Department of Water Resources costs and electrical corporation costs, as described.* Because a violation of an order or decision of the commission is a crime, this bill would impose a state-mandated local program.

(2) Existing law requires the Public Utilities Commission to order certain electrical corporations to collect and spend certain funds for public benefit programs, including cost-effective energy efficiency and conservation programs.

The bill would require the commission to require the administrator of cost-effective energy efficiency and conservation programs to direct a proportional share of its approved energy efficiency program activities for which the community choice aggregator's customers are eligible, to the community choice aggregator's territory without regard to customer class.

(3) Existing law defines "electric service provider" as an entity that offers electrical service to residential and small commercial customers, but not including an electrical corporation and requires these providers to register with the commission.

This bill would ~~include a provider of electricity to a community choice aggregator within the definition of an "electric service provider."~~ *instead define "electric service provider" as an entity that offers electrical service to customers within the service territory of an electrical corporation, but not including an electrical corporation.*

This bill would provide that if a customer of an electric service provider is involuntarily returned to service provided by an electrical corporation, any reentry fees imposed on that customer are to be the obligation of the electric service provider, *except as specified*. The bill would require the electric service provider, as a condition to its registration, to post a bond or demonstrate insurance sufficient to cover paying those reentry fees.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 331 of the Public Utilities Code is amended to read:

331. The definitions set forth in this section shall govern the construction of this chapter.

(a) "Broker" means an entity that arranges the sale and purchase of electric energy, transmission, and other services between buyers and sellers, but does not take title to any of the power sold.

(b) "Community choice aggregator" means any of the following entities, if that entity is not within the jurisdiction of a municipal utility district that provided electrical service as of the effective date of amendments to this section made by Assembly Bill 117 of the 2001-02 Regular Session of the Legislature:

(1) Any city, county, or city and county whose governing board elects to combine the loads of its residents, businesses, and municipal facilities in a communitywide electricity buyers' program.

(2) Any group of cities, counties, or cities and counties whose governing boards have elected to combine the loads of their programs, through the formation of a joint powers authority established under Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code.

(c) "Direct transaction" means a contract between any one or more electric generators, marketers, or brokers of electric power and one or more retail customers providing for the purchase and sale of electric power or any ancillary services.

(d) "Fire wall" means the line of demarcation separating residential and small commercial customers from all other customers as described in subdivision (e) of Section 367.

(e) "Marketer" means any entity that buys electric energy, transmission, and other services from traditional utilities and other suppliers, and then resells those services at wholesale or to an end-use customer.

(f) "Microgeneration facility" means a cogeneration facility of less than one megawatt.

(g) "Private aggregator" means any marketer, broker, or public agency not qualifying as a community choice aggregator that combines the loads of multiple end-use customers in facilitating the sale and purchase of electric energy, transmission, and other services on

behalf of these customers.

(h) "Restructuring trusts" means the two tax-exempt public benefit trusts established by Decision 96-08-038 of the commission to provide for design and development of the hardware and software systems for the Power Exchange and the Independent System Operator, respectively, and that may undertake other activities, as needed, as ordered by the commission.

(i) "Small commercial customer" means a customer that has a maximum peak demand of less than 20 kilowatts.

SEC. 2. Section 366 of the Public Utilities Code is amended to read:

366. (a) (1) The commission shall take actions as needed to facilitate direct transactions between electricity suppliers and end-use customers. Customers shall be entitled to aggregate their electric loads as individual consumers with private aggregators, or as members of their local community with community choice aggregators.

(2) Customers may aggregate their loads with private aggregators on a voluntary basis, if each customer does so by a positive written declaration.

(3) Customers may aggregate their loads through a public process with community choice aggregators, if each customer is given an opportunity to opt out of their community's aggregation program.

(4) If a customer makes no positive declaration to aggregate with a private aggregator, opts out of a community choice aggregator's program, or has no community choice program available, that customer shall continue to be served by the existing electrical corporation or its successor in interest.

(b) Private aggregation of customer electrical load shall be authorized by the commission for all customer classes, including, but not limited to, small commercial or residential customers. Private aggregation may be accomplished by private market aggregators, special districts, and public agencies not qualifying as community choice aggregators, or on any other basis made available by market opportunities and agreeable by positive written declaration by individual consumers.

(c) If a public agency seeks to serve as a community choice aggregator on behalf of residential customers, it shall be obligated to offer the opportunity to purchase electricity to all residential customers within its jurisdiction.

(d) (1) A community choice aggregator is hereby authorized to aggregate the electrical load of interested electricity consumers within its boundaries to reduce transaction costs to consumers, provide consumer protections, and leverage the negotiation of contracts. However, the community choice aggregator may not

aggregate electrical load if that load is served by a local publicly owned electric utility, as defined in subdivision (d) of Section 9604. A community choice aggregator may group retail electricity customers to solicit bids, broker, and contract for electric power and energy services for those customers. The community choice aggregator may enter into agreements for services to facilitate the sale and purchase of electric energy and other related services. Those service agreements may be entered into by a single city or county, a city and county, or by a group of cities, cities and counties, or counties.

(2) Under community choice aggregation, customer participation may not require a positive written declaration, but all customers shall be informed of their right to opt out of the community choice aggregation program. If no negative declaration is made by a customer, that customer shall be served through the community choice aggregation program.

(3) A community choice aggregator establishing load aggregation pursuant to this section shall develop an implementation plan detailing the process and consequences of aggregation. The implementation plan, and any subsequent changes to it, shall be considered and adopted at a duly noticed public ~~hearing.~~

~~The implementation plan shall be filed with the commission.~~ *hearing. The implementation plan shall contain all of the following:*

(A) An organizational structure of the program, its operations, and its funding.

(B) Ratesetting and other costs to participants.

(C) Provisions for disclosure and due process in setting rates and allocating costs among participants.

(D) The methods for entering and terminating agreements with other entities.

(E) The rights and responsibilities of program participants.

(F) Termination of the program.

(4) A community choice aggregator establishing load aggregation shall prepare a statement of intent with the implementation plan. Any community choice load aggregation established pursuant to this section shall provide for the following:

(A) Universal access.

(B) Reliability.

(C) Equitable treatment of all classes of customers.

(D) Any requirements established by state law or by the commission concerning aggregated service.

(5) In order to determine the ~~exit fees to be imposed~~ *cost-recovery mechanism to be imposed on the community choice aggregator* pursuant to ~~subdivision (e)~~

subdivisions (e), (f), and (g) that shall be paid by the customers of the community choice aggregator to prevent shifting of costs, ~~the community choice aggregator establishing load aggregation shall include in its implementation plan all of the following:~~

- ~~—(A) An organizational structure of the program, its operations, and its funding.~~
- ~~—(B) Ratesetting and other costs to participants.~~
- ~~—(C) Provisions for disclosure and due process in setting rates and allocating costs among participants.~~
- ~~—(D) The methods for entering and terminating agreements with other entities.~~
- ~~—(E) The rights and responsibilities of program participants.~~
- ~~—(F) Termination of the program.~~
- ~~—(G) Any additional information the commission determines is necessary to determine exit fees as provided for in subdivision (e).~~

the community choice aggregator shall file the implementation plan with the commission, and any other information requested by the commission that the commission determines is necessary to develop the cost recovery mechanism in subdivisions (e), (f), and (g).

(6) The commission shall notify any electrical corporation serving the customers proposed for aggregation that an implementation plan initiating community choice aggregation has been filed within 10 days of the filing.

(7) Within 90 days after the community choice aggregator establishing load aggregation files its implementation plan, the commission shall certify that it has received the implementation plan, including any additional information necessary to determine ~~exit fees~~ *a cost-recovery mechanism* .

Upon certification, the commission shall then provide the community choice aggregator with its findings on whether or not ~~an exit fee~~ *cost-recovery* must be paid by customers of the community choice aggregator to prevent a shifting of costs as provided for in ~~subdivision (e)~~ *subdivisions (e), (f), and (g)* .

(8) No entity specified in subdivision (b) of Section 331 proposing community choice aggregation shall act to furnish electricity to electricity consumers within its boundaries until the commission has determined whether ~~an exit fee~~ *cost-recovery* must be paid by the customers of that proposed community choice aggregation program. The commission shall designate the earliest possible effective date for implementation of a community choice aggregation program, taking into consideration the impact on ~~the~~ *any* annual procurement

plan of the electrical corporation *that has been approved by the commission* .

(9) All electrical corporations shall cooperate fully with any of the entities specified in subdivision (b) of Section 331 that investigate, pursue, or implement community choice aggregation programs. Cooperation shall include providing the entities with appropriate billing and load data, including, but not limited to, data detailing energy needs and patterns of usage, as determined by the commission, and in accordance with procedures established by the commission. Electrical corporations shall continue to provide all metering, billing, collection, and customer service to retail customers that participate in community choice aggregation programs. Bills sent by the electrical corporation to retail customers shall identify the community choice aggregator as providing the energy component of the bill. The commission shall determine the terms and conditions under which the electrical corporation provides services to community choice aggregators and retail customers.

(10) (A) A city, county, or city and county that elects to implement a community choice aggregation program within its jurisdiction pursuant to this chapter shall do so by ordinance.

(B) Two or more cities, counties, or cities and counties may participate as a group in a community choice aggregation pursuant to this chapter, through a joint powers authority established pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, if each entity adopts an ordinance pursuant to subparagraph (A).

(11) Following adoption of aggregation through the ordinance described in paragraph (10), the program shall allow any retail customer to opt out and choose any supplier or provider as provided by applicable commission policies. Delivery services shall be provided at the same rates, terms, and conditions, as approved by the commission, for community choice aggregation customers and customers who have entered into a direct transaction where applicable, as determined by the commission. Once enrolled in the aggregated entity, any ratepayer that chooses to opt out within 60 days or two billing cycles of the date of enrollment may do so without penalty and shall be entitled to receive default service pursuant to paragraph (4) of subdivision (a). Customers who return to the electrical corporation for procurement services shall be subject to the same terms and conditions as are applicable to other returning direct access customers from the same class, as determined by the commission, as authorized by the commission pursuant to this code or any other provision of law. Any reentry fees to be imposed after the opt-out period specified in this paragraph shall be approved by the commission and shall reflect the cost of reentry. The commission

shall exclude any amounts previously determined and paid pursuant to ~~subdivision (e)~~ subdivisions (e), (f), and (g) from the cost of reentry.

(12) Nothing in this section shall be construed as authorizing any city or any community choice retail load aggregator to restrict the ability of retail electric customers to obtain or receive service from any authorized service provider in a manner consistent with law.

(13) (A) The aggregated entity shall fully inform participating customers 30 days in advance of the date of commencing automatic enrollment, and for not less than three consecutive billing cycles following enrollment. Notification may include, but is not limited to, direct mailings to customers, or inserts in water, sewer, or other utility bills. Any notification shall inform customers of both of the following:

(i) That they are to be automatically enrolled and that the customer has the right to opt out of the aggregated entity without penalty.

(ii) The terms and conditions of the services offered.

(B) The community choice aggregator may contract with the electrical corporation for the notification required in subparagraph (A). If the aggregated entity elects to send one or more of the notifications required pursuant to subparagraph (A) in the electrical corporation's normally scheduled monthly billing process, the electrical corporation shall be entitled to recover from the aggregator all reasonable incremental costs it incurs related to the notification or notifications. The electrical corporation shall fully cooperate with the aggregated entity in determining the feasibility and costs associated with using the electrical corporation's normally scheduled monthly billing process to provide one or more of the notifications required pursuant to subparagraph (A).

(C) Each notification shall also include a mechanism by which a ratepayer may opt out of community choice aggregated service. The opt out may take the form of a self-addressed return postcard indicating the customer's election to remain with, or return to, service provided by the electrical corporation, or another straightforward means by which the customer may elect to derive electrical service through the electrical corporation providing service in the area.

(14) The aggregated entity shall register with the commission, which may require additional information to ensure compliance with basic consumer protection rules and other procedural matters.

(15) Once the community choice aggregator's contract is signed, the community choice aggregator shall notify the applicable

electrical corporation that community choice service will commence within 30 days.

(16) Once notified of a community choice aggregator program, the electrical corporation shall transfer all applicable accounts to the new supplier within a 30-day period from the date of the close of their normally scheduled monthly metering and billing process.

(17) An electrical corporation may recover from ratepayers all reasonable costs, as determined by the commission, of implementing Assembly Bill 117 of the 2001-02 Regular Session, including, but not limited to, all business and information system changes, except for transaction-based costs as described in this paragraph. All reasonable transaction-based costs of notices, billing, metering, collections, and customer communications or other services provided by an aggregator or its customers shall be recovered from the aggregator or its customers on terms and at rates to be approved by the commission.

~~—(e) The commission shall not approve any community choice aggregation plan subsequent to September 20, 2001, unless, as a condition of approval of the plan, exit fees are imposed on customers electing to participate in the community choice aggregation plan in an amount sufficient to recover any reasonably unavoidable past or future power procurement costs incurred by the electrical corporation for bundled service customers or by the Department of Water Resources pursuant to Division 27 (commencing with Section 80000) of the Water Code and to prevent costs shifting to remaining customers served by the electrical corporation or the Department of Water Resources.~~

~~—(1) At a minimum, the exit fees shall be equivalent to the charges that would otherwise be imposed on the customer by the commission to recover bond related costs pursuant to any agreement between the commission and the Department of Water Resources pursuant to Section 80110 of the Water Code, which charges shall be payable until any obligations of the Department of Water Resources pursuant to Division 27 (commencing with Section 80000) of the Water Code are fully paid or otherwise discharged. Exit fees relating to any bond charges shall be the property of the Department of Water Resources.~~

~~—(2) Any other exit fees imposed pursuant to this section shall be the property of the electrical corporation or the Department of Water Resources, as applicable, and as determined by the commission. The commission shall establish mechanisms, including agreements with, or orders with respect to, electrical corporations necessary to ensure that exit fees imposed pursuant to this section are promptly remitted to the entity entitled to payment.~~

~~—(3) Exit fees imposed pursuant to this section may be made payable at one time or over a period of time, at the discretion of the~~

~~commission, but shall be nonbypassable.~~

~~—(4) Any exit fees imposed pursuant to this section that rely on forecasted costs shall be revised by the commission as necessary to reflect changes due to a determination of actual costs. These revisions shall include, but not be limited to, reductions in costs to the Department of Water Resources due to the following:~~

~~—(A) Refunds made by the Federal Energy Regulatory Commission.~~

~~—(B) Contract terminations and contract renegotiations to reduce costs.~~

~~—(5) When exit fee revisions are made, customers who have paid the exit fee shall be refunded the difference between the exit fee they paid and the newly computed exit fee.~~

~~—(f)~~

(e) (1) It is the intent of the Legislature that each retail end-use customer that has purchased power from an electrical corporation on or after February 1, 2001, regardless of whether the customer thereafter takes service from an alternate provider, including a community choice aggregator, should bear a pro rata share of the Department of Water Resources' power purchase costs, as well as power purchase contract obligations incurred as of the effective date of the act adding this subdivision, that are recoverable from electrical corporation customers in commission-approved rates. It is further the intent of the Legislature to prevent any shifting of recoverable costs from customers who take service from an alternate provider, including a community choice aggregator, to electrical corporation customers.

(2) To the extent that any shifting of recoverable costs would occur, in the determination of the commission, those costs shall be recovered from each customer class in proportion to the load of each class that is served by alternate providers, including community choice aggregators.

(3) The Legislature finds that this subdivision is consistent with the requirements of Chapter 4 of the Statutes of 2001, First Extraordinary Session, and is therefore declaratory of existing law.

(f) A retail end-use customer that purchases power from a community choice aggregator pursuant to this section shall pay the Department of Water Resources both of the following:

(1) A charge equivalent to the charges that would otherwise be imposed on the customer by the commission to recover bond related costs pursuant to any agreement between the commission and the Department of Water Resources pursuant to Section 80110 of the Water Code, which charge shall be payable until any obligations of the Department of Water Resources pursuant to Division 27 (commencing with Section 80000) of the Water Code are fully paid or otherwise

discharged.

(2) Any additional costs of the Department of Water Resources, equal to the customer's proportionate share of the Department of Water Resources' estimated net unavoidable power purchase contract costs as determined by the commission, for the period commencing with the customer's purchases of electricity from the community choice aggregator, through the expiration of all then existing power purchase contracts entered into by the Department of Water Resources.

(g) A retail end-use customer purchasing power from a community choice aggregator pursuant to this section shall reimburse the electrical corporation that previously served the customer for all of the following:

(1) The electrical corporation's unrecovered past undercollections, including any financing costs, attributable to that customer, that the commission lawfully determines may be recovered in rates.

(2) Any additional costs of the electrical corporation recoverable in commission-approved rates, equal to the share of the electrical corporation's estimated net unavoidable power purchase contract costs attributable to the customer, as determined by the commission, for the period commencing with the customer's purchases of electricity from the community choice aggregator, through the expiration of all then existing power purchase contracts entered into by the electrical corporation.

(h) (1) Any charges imposed pursuant to subdivision (f) shall be the property of the Department of Water Resources. Any charges imposed pursuant to subdivision (g) shall be the property of the electrical corporation. The commission shall establish mechanisms, including agreements with, or orders with respect to, electrical corporations necessary to assure that charges payable pursuant to this section shall be promptly remitted to the party entitled to payment.

(2) Charges imposed pursuant to this section shall be nonbypassable.

(i) Notwithstanding Section 80110 of the Water Code, the commission shall authorize community choice aggregation only if ~~exit fees are~~ a cost recovery mechanism is imposed, as the commission determines necessary pursuant to ~~subdivision (e)~~ subdivisions (e), (f), and

(g) . Except as provided by this subdivision, the provisions of Assembly Bill 117 of the 2001-02 Regular Session shall not be construed to alter the suspension by the commission of direct purchases of power from alternate providers pursuant to Section 80110 of the Water Code.

(j) (1) The commission shall not authorize community choice aggregation until it implements a cost recovery mechanism, consistent with subdivisions (e), (f), and (g) that is applicable to customers that elected to purchase electricity from an alternate provider between February 1, 2001, and the effective date of the act adding this subdivision.

(2) The commission shall not authorize community choice aggregation until it submits a report certifying compliance with paragraph (1) to the Senate Energy, Utilities and Communications Committee, or its successor, and the Assembly Committee on Utilities and Commerce, or its successor.

SEC. 3. Section 381.1 is added to the Public Utilities Code, to read:

381.1. The commission shall require the administrator of cost-effective energy efficiency and conservation programs to direct a proportional share of its approved energy efficiency program activities for which the community choice aggregator's customers are eligible, to the community choice aggregator's territory without regard to customer class. To the extent that energy efficiency and conservation programs are targeted to specific locations to avoid or defer transmission or distribution system upgrades, the targeted expenditures shall continue irrespective of whether the loads in those locations are served by an aggregator or by an electrical corporation. The commission shall also direct the administrator to work with the community choice aggregator, to provide advance information where appropriate about the likely impacts of energy efficiency programs and to accommodate any unique community program needs by placing more, or less, emphasis on particular approved programs to the extent that these special shifts in emphasis in no way diminish the effectiveness of broader statewide or regional programs. If the community choice aggregator proposes energy efficiency programs other than programs already approved for implementation in its territory, it shall do so under established commission policies and procedures.

SEC. 4. Section 394 of the Public Utilities Code is amended to read:

394. (a) As used in this section, "electric service provider" means an entity that offers electrical service to ~~residential and small commercial customers, or a provider of electricity to a community choice aggregator, as defined in Section 331, but does~~

customers within the service territory of an electrical corporation, but does not include an electrical corporation, as defined in Section 218, or a public agency that offers electrical service to residential and small commercial customers within its

jurisdiction, or within the service territory of a local publicly owned electric utility. "Electric service provider" includes the unregulated affiliates and subsidiaries of an electrical corporation, as defined in Section 218.

(b) Each electric service provider shall register with the commission. As a precondition to registration, the electric service provider shall provide, under oath, declaration, or affidavit, all of the following information to the commission:

- (1) Legal name and any other names under which the electric service provider is doing business in California.
- (2) Current telephone number.
- (3) Current address.
- (4) Agent for service of process.
- (5) State and date of incorporation, if any.
- (6) Number for a customer contact representative, or other personnel for receiving customer inquiries.
- (7) Brief description of the nature of the service being provided.

(8) Disclosure of any civil, criminal, or regulatory sanctions or penalties imposed within the 10 years immediately prior to registration, against the company or any owner, partner, officer, or director of the company pursuant to any state or federal consumer protection law or regulation, and of any felony convictions of any kind against the company or any owner, partner, officer, or director of the company. In addition, each electric service provider shall furnish the commission with fingerprints for those owners, partners, officers, and managers of the electric service provider specified by any commission decision applicable to all electric service providers. The commission shall submit completed fingerprint cards to the Department of Justice. Those fingerprints shall be available for use by the Department of Justice and the Department of Justice may transmit the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The commission may use information obtained from a national criminal history record check conducted pursuant to this section to determine an electric service provider's eligibility for registration.

(9) Proof of financial viability. The commission shall develop uniform standards for determining financial viability and shall publish those standards for public comment no later than March 31, 1998. In determining the financial viability of the electric service provider, the commission shall take into account the number of customers the potential registrant expects to serve, the number of kilowatthours of electricity it expects to provide, and any other appropriate criteria to ensure that residential and small commercial customers have adequate recourse in the event of fraud or

nonperformance.

(10) Proof of technical and operational ability. The commission shall develop uniform standards for determining technical and operational capacity and shall publish those standards for public comment no later than March 31, 1998.

(c) Any registration filing approved by the commission prior to the effective date of this section which does not comply in all respects with the requirements of subdivision (a) of Section 394 shall nevertheless continue in force and effect so long as within 90 days of the effective date of this section the electric service provider undertakes to supplement its registration filing to the satisfaction of the commission. Any registration that is not supplemented by the required information within the time set forth in this subdivision shall be suspended by the commission and shall not be reinstated until the commission has found the registration to be in full compliance with subdivision (a) of Section 394.

(d) Any public agency offering aggregation services as provided for in Section 366 solely to retail electric customers within its jurisdiction that has registered with the commission prior to the enactment of this section may voluntarily withdraw its registration to the extent that it is exempted from registration under this chapter.

(e) Before reentering the market, electric service providers whose registration has been revoked shall file a formal application with the commission that satisfies the requirements set forth in Section 394.1 and demonstrates the fitness and ability of the electric service provider to comply with all applicable rules of the commission.

(f) Registration with the commission is an exercise of the licensing function of the commission, and does not constitute regulation of the rates or terms and conditions of service offered by electric service providers. Nothing in this part authorizes the commission to regulate the rates or terms and conditions of service offered by electric service providers.

SEC. 5. Section 394.25 of the Public Utilities Code is amended to read:

394.25. (a) The commission may enforce the provisions of Sections 2102, 2103, 2104, 2105, 2107, 2108, and 2114 against electric service providers as if those electric service providers were public utilities as defined in these code sections. Notwithstanding the above, nothing in this section grants the commission jurisdiction to regulate electric service providers other than as specifically set forth in this part. Electric service providers shall continue to be subject to the provisions of Sections 2111 and 2112. Upon a finding by the commission's executive director that there is evidence to

support a finding that the electric service provider has committed an act constituting grounds for suspension or revocation of registration as set forth in subdivision (b) of Section 394.25, the commission shall notify the electric service provider in writing and notice an expedited hearing on the suspension or revocation of the electric service provider's registration to be held within 30 days of the notification to the electric service provider of the executive director's finding of evidence to support suspension or revocation of registration. The commission shall, within 45 days after holding the hearing, issue a decision on the suspension or revocation of registration, which shall be based on findings of fact and conclusions of law based on the evidence presented at the hearing. The decision shall include the findings of fact and the conclusions of law relied upon.

(b) An electric service provider may have its registration suspended or revoked, immediately or prospectively, in whole or in part, for any of the following acts:

(1) Making material misrepresentations in the course of soliciting customers, entering into service agreements with those customers, or administering those service agreements.

(2) Dishonesty, fraud, or deceit with the intent to substantially benefit the electric service provider or its employees, agents, or representatives, or to disadvantage retail electric customers.

(3) Where the commission finds that there is evidence that the electric service provider is not financially or operationally capable of providing the offered electric service.

(4) The misrepresentation of a material fact by an applicant in obtaining a registration pursuant to Section 394.

(c) Pursuant to its authority to revoke or suspend registration, the commission may suspend a registration for a specified period or revoke the registration, or in lieu of suspension or revocation, impose a moratorium on adding or soliciting additional customers. Any suspension or revocation of a registration shall require the electric service provider to cease serving customers within the boundaries of investor-owned electric corporations, and the affected customers shall be served by the electrical corporation until the time when they may select service from another service provider. Customers shall not be liable for the payment of any early termination fees or other penalties to any electric service provider under the service agreement if the serving electric service provider's registration is suspended or revoked.

(d) The commission shall require any electric service provider whose registration is revoked pursuant to paragraph (4) of subdivision (b) to refund all of the customer credit funds that the electric service provider received from the State Energy Resources

Conservation and Development Commission pursuant to paragraph (1) of subdivision (e) of Section 383.5. The repayment of these funds shall be in addition to all other penalties and fines appropriately assessed the electric service provider for committing those acts under other provisions of law. All customer credit funds refunded under this subdivision shall be deposited in the Renewable Resource Trust Fund for redistribution by the State Energy Resources Conservation and Development Commission pursuant to Section 383.5. This subdivision may not be construed to apply retroactively.

(e) If a customer of an electric service provider is involuntarily returned to service provided by an electrical corporation, any reentry fee imposed on that customer that the commission deems is necessary to avoid imposing costs on other customers of the electric corporation shall be the obligation of the electric service provider , *except in the case of a customer returned due to default in payment or other contractual obligations or because the customer's contract has expired* . As a condition of its registration pursuant to Section 394, an electric service provider shall post a bond or demonstrate insurance sufficient to cover those reentry fees.

In the event that an electric provider becomes insolvent and is unable to discharge its obligation to pay reentry fees, the fees shall be allocated to the returning customers.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.